

EXHIBIT 1
GCI Reply Comments
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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the New Requirements)
Of 47 CFR § 51 Related to FCC Triennial Review)
Order Interconnection Provisions and Policies) R-03-7
_____)

REPLY COMMENTS OF GCI

GCI Communication Corp. d/b/a General Communication, Inc. and d/b/a GCI
("GCI") hereby submits these reply comments and further evidence in accordance
with the Commission's *Order Opening Docket and Setting Procedural Schedule*,
issued in the captioned proceeding on November 28, 2003 (Order No. 1), as modified
by the *Order Revising Procedural Schedule*, issued on February 13, 2004 (Order No.
2) and the *Order Requesting Data, Setting Procedural Schedule, and Appointing*
Hearing Examiner, issued on March 1, 2004 (Order No. 3).

I. Introduction and Background

The Commission commenced this proceeding pursuant to the FCC's *Triennial*
Review Order, in which the FCC mandated the standard by which state commissions
are to analyze the availability of access by carriers providing competitive local

1 services¹ to the incumbent carrier's network elements on an unbundled basis. This
2 review must be conducted in accordance with FCC-mandated standards on a
3 granular, market-by-market basis, reflecting the relevant service conditions of the
4 particular area in question. Given the D.C. Circuit's demand for a granular analysis
5 that yielded the *Triennial Review Order*, it is ironic that the Court has since vacated
6 and remanded key portions of the order—particularly the FCC's involvement of state
7 commissions in the process—because the FCC adopted a common procedural
8 mechanism involving the states to satisfy that very demand.² In any event, the
9 *Triennial Review Order*, and its July 2 deadline for state commissions to render
10 decisions thereunder, remain in effect as parties and the courts sort out possible
11 appeals, petitions for stay, and now a possible request by the FCC to extend the D.C.
12 Circuit's initial stay of the mandate for an additional 45 days, until June 14.³

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16 In contrast to the procedural uncertainty caused by the D.C. Circuit decision, it
17 is clear that GCI, and competitive local exchange carriers in general, require
18 continued access to ACS unbundled switching, dedicated transport, and DS3 and
19 dark fiber loops, the three UNEs at issue in this case. Not only does ACS readily
20 concede that none of the applicable self-deployment or competitive wholesale
21 facilities triggers are met for any of these elements, but each of its claims in support a
22 "no impairment" determination under the potential deployment trigger have been
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25 ¹ *United States Telecom. Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*").

26 ² *United States Telecom Ass'n v. FCC*, No. 00-1012 (D.C. Cir., Mar. 2, 2004) ("*USTA II*").

27 ³ See Press Statement of FCC Commissioners (rel. Mar. 31, 2004) (attached hereto).

1 squarely rejected by the FCC in the *Triennial Review Order*. Stated simply, ACS
2 would have the Commission foreclose GCI and other entrants from access to certain
3 unbundled network elements (“UNEs”) based on ACS’ assertion that GCI really has
4 access to and serves enough customers already. From ACS’ perspective, it is
5 precisely *because* “ACS’ markets are experiencing exactly the type of facilities-based
6 competition that the FCC contemplated in adopting its local competition rules,”⁴ that
7 ACS would have the Commission substantially diminish the access to those very
8 facilities necessary to make such competition possible.
9

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11 GCI has provided substantial evidence that continued access to unbundled
12 switching is necessary in Fairbanks, Juneau, and Anchorage. ACS-deployed
13 switching devices in the field in each service area blocks GCI’s access to customer
14 loops. ACS’ answer to this problem is that GCI should be limited to sub-loop access
15 for these lines, requiring GCI to collocate at every remote, OPM, and DLC that ACS
16 chooses to deploy. This response ignores the simple steps ACS could take—and is
17 required by the FCC to take—to accommodate GCI’s access to loops via its own
18 switching. GCI will be impaired until ACS takes these steps. As long as there is
19 impairment in the market, unbundled switching must remain available.
20

21
22 As for dedicated transport and high-capacity loops, ACS has offered *no*
23 *evidence* that any of the applicable triggers is met. While GCI has deployed
24 substantial fiber facilities in the areas it serves, and also provides some DS3 and dark

25 ⁴ Comments of ACS of Anchorage, Inc, ACS of Fairbanks, Inc. and ACS of Alaska, Inc., R-
26 03-7 (filed Jan. 12, 2004) (“ACS Comments”) at 4.

1 fiber loops directly to some customers, in no way does this fact support a “no
2 impairment” finding, even under the potential deployment analysis. At this point in
3 time, ACS *cannot* provide evidence demonstrating multiple, competitive supply for
4 these UNEs in the relevant market.
5

6 Finally, GCI notes that the Commission required ACS in the first instance to
7 make a *prima facie* case in support of any impairment finding it seeks to rebut, along
8 with any evidence supporting that position.⁵ ACS made no such showing, however,
9 offering only generalities and theories already rejected by the FCC. On this basis
10 alone, the Commission should reject ACS’ effort to eliminate consumer choice for
11 those customers located in geographic areas where the ACS network architecture
12 blocks GCI’s access to customer loops.⁶
13

14 **II. ONLY THE “POTENTIAL DEPLOYMENT” ANALYSIS APPLIES**
15 **FOR ANY UNE IN ANCHORAGE, FAIRBANKS, AND JUNEAU**

16 ACS concedes that the self-provisioning and wholesale facilities triggers are
17 not met for unbundled switching, and cannot show that they are met for transport and
18 loops in any market. Therefore, ACS’ only claim in seeking a “no impairment”
19 finding for local switching, dedicated transport, and high capacity loops could be
20 under the “potential deployment” trigger. ACS’ comments and testimony
21 demonstrate, however, that it is not applying that trigger correctly.
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24 ⁵ The Commission also provided an opportunity for discovery in response to requests from
25 interested parties, to be submitted after comments and before replies. *Id.* at 10-11.

26 ⁶ See Comments of General Communication, Inc., R-03-7 (filed Jan. 12, 2004) (“GCI
27 Comments”) at n.9.

A. None of the Self-Deployment or Competitive Wholesale Triggers Are Met for Any UNE

With respect to unbundled switching, the FCC specified that if three non-CMRS competitive providers of switching not affiliated with the ILEC exist in a market, as defined for the purpose of conducting the impairment analysis, the ILEC need not offer unbundled switching.⁷ There are not three such providers in *any* geographic market configuration of the Anchorage, Fairbanks, or Juneau areas today.⁸ The second trigger is met if there are two wholesale providers of switching in a market, which are not affiliated with the ILEC.⁹ With the absence of any wholesale switching provider anywhere in Alaska, this trigger is also not met.¹⁰ For this reason, the Commission has concluded that “Alaska does not face the level of facilities-based competition for DS0 local switching such that a finding of no impairment can be made based solely on the two FCC triggers.”¹¹

ACS also agrees. It states that “[b]ecause both of the FCC enumerated triggers . . . require that there be more than two competing providers in the markets, it is unlikely that these triggers will be met in the local exchange service markets in

⁷ 47 C.F.R. § 51.319(d)(2)(iii)(A)(1). The FCC concluded that neither wireless switching nor cable provides acceptable substitutes for unbundled local switching. Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, CC Docket Nos. 01-338, 96-98 & 98-147 (rel. Aug. 21, 2003) at ¶ 445-46 (“*Triennial Review Order*” or “*TRO*”).

⁸ Testimony of Emily Thatcher, R-03-7 (filed Jan. 12, 2004) (“Thatcher Testimony”) at 4.

⁹ 47 C.F.R. § 51.319(d)(2)(iii)(A)(2).

¹⁰ Thatcher Testimony at 4.

¹¹ *Order Requesting Data, Setting Procedural Schedule, and Appointing Hearing Examiner*, R-03-7 (Mar. 1, 2004) (“*Order Requesting Data*”) at 5.

Alaska.”¹² ACS witness Shelanski more directly states, “There are neither three CLECs using their own switches to serve mass market customers nor two independent wholesale suppliers of unbundled circuit switching in ACS’ LEC service areas.”¹³

Similar self-provisioning and competitive wholesale triggers apply for transport and high-capacity loops. For transport, these triggers are assessed on a route-by-route basis,¹⁴ and for loops, on a customer-location basis.¹⁵ Given ACS’ failure to identify any specific route or customer location where it believed a transport or loop trigger may be met, and based on the discovery responses, it is clear that none of these triggers are met.

B. ACS Misinterprets the “Potential Deployment” Trigger

The only impairment challenge ACS can possibly raise is under the potential deployment trigger. It is evident, however, that ACS is seeking such a determination based on an erroneous application of the standard. ACS consistently claims that the trigger is met because *GCI* has deployed switches, transport, and (on a more limited basis) high-capacity loops. This interpretation of the trigger, however, renders the FCC’s standard nonsensical. Satisfaction of this trigger requires not just that a single carrier has deployed facilities in the relevant market, but a showing that *one* of the other two triggers—requiring competitive, multiple supply—could potentially be

¹² ACS Comments at 13.

¹³ Affidavit of Howard Shelanski, R-03-7 (filed Jan. 12, 2004) (“Shelanski Affidavit”) at 15.

¹⁴ 47 C.F.R. § 51.319 (e).

¹⁵ 47 C.F.R. § 51.319(a)(5) (DS3 loops) and (a)(6) (dark fiber loops).

met.

This is plain from the *Triennial Review Order* in the FCC's selection of the three triggers. The FCC stated:

We set the number of competitive facilities at three for several reasons. First, we choose three self-provisioners as the appropriate threshold in order to be assured that the market can support "multiple, competitive" local exchange service providers using their own switches. Second, setting the trigger at three competitive facilities takes into consideration the likelihood that self providers will not offer their service for wholesale, based on the evidence that local exchange service providers have generally not shown an interest in providing wholesale services, in contrast to the wholesale trigger, described below, which is met if there are two actual wholesalers. Finally, we believe that the existence of three self-provisioners of switching demonstrates adequately the technical and economic feasibility of an entrant serving the mass market with its own switch, and indicates that existing barriers to entry are not insurmountable.¹⁶

These principles are equally relevant to the potential deployment analysis. To the extent that the FCC directed that a single self-provisioned switch be give "substantial weight," it did so in the context of directing state commissions to consider whether "the market can support 'multiple, competitive supply.'"¹⁷ As GCI witness Kelley explains, "the presence of a single successful self-provider cannot be used to show general non-impairment. The decisions the RCA makes here will affect potential new entrants that do not have GCI's history in the market."¹⁸ ACS has made no

¹⁶ *Triennial Review Order* at ¶ 501 (internal footnotes omitted).

¹⁷ *Id.* at ¶ 510.

¹⁸ Reply Testimony of A. Daniel Kelley, R-03-7 (filed Apr. 2, 2004) ("Kelly Reply Testimony") at 42.

1 claim that GCI's deployment demonstrates that the markets can support "multiple,
2 competitive supply."

3
4 Moreover, to be able to demonstrate that the potential deployment trigger has
5 been met, evidence of actual deployment is not the lone evidence to be weighed. For
6 example, with respect to the potential deployment of DS3 loops, the FCC identifies
7 other additional factors, like "local engineering costs of building and utilizing
8 transmission facilities; the cost of underground or aerial laying of fiber or copper; the
9 cost of equipment needed for transmission; installation and other necessary costs
10 involved in setting up service; local topography such as hills and rivers;
11 availability/feasibility of similar quality/reliability alternative transmission
12 technologies at that particular location."¹⁹ Similar analyses are required for
13 switching²⁰ and transport.²¹

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16 To date, ACS has provided no data of this sort whatsoever, relying only on
17 broad statements with no specifics. In any event, to the extent that ACS is calling on
18 the Commission to engage in a potential deployment analysis, that trigger cannot be
19 met unless ACS is able to demonstrate the likelihood of "multiple, competitive
20 supply" with concrete analysis and data. Pointing the finger at a single competitor
21 does not satisfy that requirement.
22
23

24 ¹⁹ 47 C.F.R. § 51.319(a)(5)(ii); *see also* 47 C.F.R. § 51.319(a)(6)(ii) (dark fiber loops).

25 ²⁰ 47 C.F.R. § 51.319(d)(2)(iii)(B) (mass market switching).

26 ²¹ 47 C.F.R. § 51.319(e)(2)(ii) (DS3 transport); 47 C.F.R. § 51.319(e)(2)(iii)(2) (dark fiber transport). There is no potential deployment analysis applicable for DS1 transport.

III. GCI IS IMPAIRED FOR MASS MARKET UNBUNDLED SWITCHING WHERE ACS BLOCKS GCI'S ACCESS TO THE CUSTOMER LOOP

As GCI demonstrated in its Comments and supported by witness testimony, continued access to unbundled switching for mass market customers is necessary to address the impairment caused by ACS' extensive deployment of non-multi-hostable remotes, digital loop concentrators ("DLCs"), and OPMs throughout the network serving Fairbanks, Juneau, and Anchorage. Unbundled switching must continue to be made available unless and until ACS resolves this impairment.

In the *Scheduling Order* in this proceeding, the Commission directed that any party wishing to dispute the FCC's finding of impairment is required in the initial comment phase to "make a *prima facie* case, including details of proof in support of their position."²² The Commission also provided that "[i]nterested persons may also file evidence in support of the impairment finding."²³ In its initial comments and evidence, GCI defined the relevant geographic market for the DS0 local circuit switching analysis;²⁴ discussed GCI's extensive investments in collocation for the purpose of accessing customer loops via its switching facilities;²⁵ demonstrated that even with seven collocation arrangements in Anchorage and two each in Fairbanks and Juneau, GCI cannot serve DS0 loops where ACS has installed non-multi-

²² *Order Opening Docket and Setting Procedural Schedule*, R-03-7 (Nov. 23, 2003) ("TRO Procedural Order") at 5.

²³ *Id.* at 5.

²⁴ GCI Comments at 6-15.

²⁵ *See* Thatcher Testimony at 2-3.

1
2 hostable concentrators or remote line/switch modules;²⁶ and demonstrated that there
3 are economic barriers in connection with extending collocation to additional ACS
4 remotes or concentrators.²⁷

5 For its part, ACS made generalized arguments about GCI switch
6 deployment—essentially ignoring that ACS-installed facilities block GCI’s use of
7 those facilities. ACS generally seeks to have the Commission apply a review
8 standard quite unlike that adopted by the FCC taking into account that fact that GCI
9 has deployed facilities, retail market share, and cable plant. As ACS witness
10 Shelanski states, “the above facts defeat any reasonable possibility of economically
11 meaningful ‘impairment’ due to local switching in Alaska.”²⁸ While it is not clear
12 how the Commission might turn the ambiguous phrases “reasonable possibility” and
13 “economically meaningful” into a workable standard, it has no room under the
14 *Triennial Review Order* to do so. ACS has failed to make a *prima facie* case for “no
15 impairment” under the required standard and the FCC has soundly rejected
16 arguments it offers only in support of its position.

17
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19 **A. The Relevant Market Is Defined by the Accessibility of Customer**
20 **Loops at Each Central Office**

21 As GCI demonstrated in its Comments, the relevant markets for performing
22 the impairment analysis for each of the Anchorage, Fairbanks, and Juneau study
23 areas are comprised of the areas served by loops accessible at each ACS host switch
24

25 ²⁶ GCI Comments at 17-21; Thatcher Testimony at 5-11.

26 ²⁷ GCI Comments at 21-23; Thatcher Testimony at 11-14.

27 ²⁸ Shelanski Affidavit at ¶ 7.

1 and those areas served by loops inaccessible at each ACS host switch. GCI has
2 provided exhibits reflecting these geographic areas.²⁹ This approach best reflects that
3 ILECs are obligated to provide loop access at the central office;³⁰ that “GCI is
4 collocated in 100% of ACS’ main switching centers in Anchorage, Fairbanks and
5 Juneau”³¹ and that ACS’ network design impedes GCI’s ability to access local loops
6 at the central office. This approach also reflects FCC precedent for identifying
7 geographic markets.³² In this way, GCI’s definition of “market will reveal sources of
8 impairment that exist,” whereas ACS’ broader, simplistic one may not.
9

11 1. The ACS Market Definition Is Not Sufficiently Granular

12 ACS advocates an overly broad market definition, seeking to define markets
13 by total serving areas in each of Fairbanks, Juneau, and Anchorage.³³ According to
14 ACS witness Shelanski, the markets should be defined as exchange service territory
15 served respectively by ACS-AN, ACS-F, and ACS-AK.³⁴ He claims that this broad
16 definition is necessary in adherence to his understanding that “switching markets
17 should not be defined in such a way that divides areas that could economically be
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21 ²⁹ Response of GCI to RCA Order Requesting Data, R-03-7 (filed Mar. 19, 2004) (“GCI
22 Discovery Response”), Exhibits ET-10 (Fairbanks), ET-11 (Juneau), and ET-11
(Anchorage).

23 ³⁰ GCI Comments at 11-14.

24 ³¹ ACS Comments to Response of GCI to Notice of Special Public Meeting, R-03-7 (Oct.
20, 2003) (“ACS Comments”).

25 ³² See GCI Comments at 10-11.

26 ³³ ACS Comments at 9-11.

27 ³⁴ Shelanski Affidavit at ¶ 21.

1 served by a single switch.”³⁵ The consequence of his proposal, however, ignores that
2 although GCI has made the determination to deploy a switch to serve each of
3 Fairbanks, Juneau, and Anchorage, the ACS network architecture blocks GCI’s
4 access to loops in these areas despite these extensive collocations—beyond the wire
5 center level. As GCI witness Kelley concludes, “[W]hen concentrator devices are
6 present, even individual wire centers must be broken down into separate markets.”³⁶
7

8
9 Moreover, defining markets in the manner proposed by Dr. Shelanski would
10 produce negative incentive effects for both ACS and CLECs. According to Dr.
11 Kelley, this overbroad market definition produces two negative incentives. First,
12 “[i]f markets are defined to encompass both concentrator device-served and non-
13 concentrator device-served areas, then ACS has the incentive to expand the scope of
14 its concentrator-device deployment in order to reduce competition.”³⁷ Second, CLEC
15 incentives to invest may also suffer. “[I]f a CLEC knows that entering the market in
16 one small area, a wire center for example, will lead to the trigger being pulled in all
17 wire centers in a market defined too broadly, that will provide a disincentive for the
18 CLEC to invest.”³⁸ These outcomes are in direct conflict with two of the goals of the
19 1996 Act—to promote competition for the benefit of consumers and promote
20 investment in facilities. Thus, the Shelanski market definition is ill-suited for the
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24 ³⁵ *Id.* at ¶ 20.

25 ³⁶ Kelley Reply Testimony at ¶ 29; *see also id.* at ¶¶ 26-29.

26 ³⁷ *Id.* at ¶ 31; *see also id.* at ¶ 30.

27 ³⁸ *Id.* at ¶ 31.

1 Fairbanks, Juneau, and Anchorage service areas, potentially harmful to consumers,
2 and may stifle incentives for CLEC investment.

3
4 **2. ACS Concedes that the Central Office is the Relevant Point**
5 **for Assessing Available Access to Customer Loops**

6 The core impairment issue for unbundled switching in areas where a CLEC
7 has deployed switching and collocations is access to the unbundled loop at the central
8 office. ACS' own statements and that of its witnesses, as well as information
9 submitted in this proceeding, demonstrate agreement with this principle.

10 GCI identified the following central offices: Anchorage, North, South, East,
11 West, and Central; Fairbanks-Globe; and Juneau-Juneau Main.³⁹ This assessment is
12 confirmed by data provided by ACS in discovery.⁴⁰ Likewise, ACS witness Pratt
13 confirms that GCI has "collocated in all of ACS's major wire centers."⁴¹ Thus, ACS
14 acknowledges that GCI has done precisely what the FCC requires to gain access to
15 customer loops: "Competitive CLECs must collocate facilities at the incumbent
16 LEC's central offices, and then build additional transport facilities to extend those
17 loops to competitive LEC switches, and route all of their customers' traffic to their
18 own switches."⁴² Thus, the ability to access the loop at the central office is the
19 relevant inquiry for assessing impairment with respect to deployed switching.
20
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23 ³⁹ GCI Comments at 15.

24 ⁴⁰ See Reply Testimony of Emily Thatcher, R-03-7 (Apr. 2, 2004) ("Thatcher Reply
Testimony") at 3 (describing ACS data).

25 ⁴¹ Affidavit of Stephen A. Pratt in Support of Comments of ACS LECs, R-03-7 (filed Jan.
12, 2004) ("Pratt Affidavit") at n.2.

26 ⁴² *Triennial Review Order* at ¶ 464.

3. The GCI Definition Reflects the Realities of Both Its Switch Deployments and ACS-Blocked Loops

In reality, while GCI has invested millions of dollars in switching and collocations in each of the central offices in Anchorage, Fairbanks, and Juneau,⁴³ as well as to certain remote sites—beyond the switching/loop access architecture described by the FCC—there remain 29 percent inaccessible loops in Fairbanks,⁴⁴ over 50 percent of the loops in Juneau,⁴⁵ and some nine percent of the loops in Anchorage that GCI *cannot reach via its deployed switching*.⁴⁶ For the geographic areas served by these loops, GCI is impaired.⁴⁷

As described by Dr. Kelley, the service areas at issue in this proceeding are distinctive *because of* the proliferation of remote devices, and the geographic market must reflect that.⁴⁸ In the states where he has analyzed impairment, loops served by concentrator devices have been extremely limited.⁴⁹ “The quantitatively significant presence of concentrator devices in ACS territory gives rise to differences in supply characteristics within wire centers similar to the factors described above that vary

⁴³ See, e.g., Thatcher Testimony at 2 (\$6 million in switching investment), 3 (describing over \$3 million in collocation investment in Fairbanks and Juneau alone).

⁴⁴ Thatcher Reply Testimony at 6.

⁴⁵ *Id.* at 8.

⁴⁶ *Id.* at 10.

⁴⁷ In this regard, it is entirely misleading for ACS to claim as proof of non-impairment that “GCI serves only approximately 5% of its customer lines through the UNE platform.” ACS Comments at 16. This number apparently reflects a statewide calculation, which is plainly irrelevant to this analysis.

⁴⁸ Kelley Reply Testimony at ¶ 28.

⁴⁹ *Id.* (“For example, in Michigan, less than one percent of the customer loops are provisioned through IDLCs.”).

1 among wire centers.”⁵⁰ In distinguishing between geographic areas where GCI can
2 and cannot access customer loops, therefore, only GCI’s market definition takes into
3 account the technical barriers raised to GCI’s use of its deployed facilities by ACS’
4 network architecture.
5

6 **B. ACS’ Theories to Thwart Facilities-Based Competition Hold No**
7 **Currency**

8 ACS offers three basic arguments in support of its general claim that GCI
9 should not have access to unbundled switching. First, ACS generally cites GCI
10 switch deployment, without reference to barriers to loop access. Second, ACS claims
11 that GCI’s gains in the retail market support a finding of “no impairment.” Finally,
12 ACS claims that GCI’s ownership of cable facilities supports a finding of “no
13 impairment.” Each of these ACS arguments has been rejected by the FCC, and none
14 has any bearing on the required impairment analysis.
15

16 **1. ACS Would Have the Commission Overlook the ACS-**
17 **Barriers to GCI Use of Deployed Switching Facilities**

18 ACS witness Shelanski claims that “even with unbundled switching available
19 to competitors in Alaska, GCI . . . has chosen to use its own switches to serve the
20 great majority of its local exchange customers.”⁵¹ From this, he draws the conclusion
21 that competitive entry in Alaska is not impaired in the absence of unbundled
22 switching.⁵² Dr. Shelanski’s reasoning suffers from two critical ailments. First, it
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24 _____
25 ⁵⁰ *Id.*

26 ⁵¹ Shelanski Affidavit at ¶ 4.

27 ⁵² *Id.*

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denies GCI's access to loops on a nondiscriminatory basis.⁵³ ACS can access customer loops post-deployment of remotes and concentrators in the loop transmission path, but—due solely to the ACS architecture—GCI cannot. This constitutes “a significant barrier to entry...such that service to mass market customers is foreclosed even to carriers that self-provision switches.”⁵⁴ As GCI has substantiated through testimony and evidence, GCI plainly is *not* able to serve the entire customer base from a single 5E switch” in each LEC service area, as claimed by ACS,⁵⁵ solely due to impairments created by ACS.

Second, it produces an effective cap on the competitive entrant. The practical end of Dr. Shelanski's rational is that anywhere from nine percent to over 50 percent of the customer lines in a market can be *protected from* facilities-based competition via unbundled switching, simply by the ILEC's blocking access to the customer loop. This cannot be squared with the central tenets of the Telecommunications Act of 1996. Moreover, when GCI is able to serve a UNE loop via its own switch, it secures the full benefits of serving that customer. If unbundled switching is eliminated and GCI is forced to resale provisioning to serve the customer because its access to the loop is blocked by the ACS network architecture, then ACS will benefit financially from the barriers it has raised, and GCI will be harmed. Of course, the customer may

⁵³ See GCI Comments at 11-14 (describing ILEC obligation to provide access to UNE loops).

⁵⁴ *Triennial Review Order* at ¶ 510; Kelley Reply Testimony at ¶ 36; GCI Comments at 17-19.

⁵⁵ ACS Comments at 22 (citing Shelanski Affidavit at 11).

1 be denied competitive benefits as well.⁵⁶

2
3 According to Dr. Shelanski, ACS' denial of access to UNE loops should be of
4 no moment because "market-based competitive rates" could be developed.⁵⁷ This
5 statement is nonsensical against the background of the technical barriers ACS'
6 network architecture raises. It is axiomatic that a carrier with control of bottleneck
7 facilities has market power, and with it, the ability to dictate price. For this reason,
8 "where GCI cannot use its own switching facilities, it has no bargaining power."⁵⁸
9

10 2. The FCC Rejected ACS' Retail Market Share Arguments

11 According to ACS, each of GCI's statewide market share,⁵⁹ its market share in
12 each of Anchorage, Fairbanks, and Juneau,⁶⁰ and its market share in comparison with
13 CLECs outside of Alaska⁶¹ "is relevant to the issue of impairment in the different
14 markets."⁶² As it did in the *Triennial Review* proceeding, ACS continues to claim
15 that certain levels of retail market share support a finding of non-impairment.⁶³ The
16 FCC squarely rejected ACS' proffered correlation between retail market share and
17 the impairment analysis.
18

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20 ⁵⁶ See Kelley Reply Testimony at ¶¶ 10-12.

21 ⁵⁷ Shelanski Affidavit at ¶ 5.

22 ⁵⁸ Kelley Reply Testimony at ¶ 39.

23 ⁵⁹ ACS Comments at n.59 (citing Shelanski Affidavit at 9).

24 ⁶⁰ See, e.g., *id.* at 15.

25 ⁶¹ *Id.* at 14-15 (stating that GCI's market share in Anchorage "is 15 times greater than the
26 market share on which the FCC relied" to issue a national finding of impairment for
unbundled switching).

27 ⁶² ACS LECs' Request for the RCA to Order the Production of Supplemental Information in
Order to Make the Necessary Factual Findings Required in Order No. 1, R-03-7 (filed Jan.
27, 2004) ("ACS Request for Data") at 4.

⁶³ See ACS Comments at 13-16; Shelanski Affidavit at 8-10.

1 In that proceeding, ACS asked that the FCC eliminate unbundling
2 requirements in “markets where there are high levels of retail competition, such as
3 Alaska.”⁶⁴ The FCC’s response was an unequivocal no.⁶⁵ The FCC expressly
4 rejected the ACS request that the FCC “not require unbundling in markets where
5 competitors have achieved a particular market share, where competitors have a
6 certain number of collocations, or where consumers have a choice of facilities-based
7 providers.”⁶⁶ Thus, the ACS arguments here run directly counter to the FCC’s
8 conclusion that it “not . . . base [its] impairment determination on whether the level
9 of retail competition is sufficient such that unbundling is no longer required to enable
10 further entry.”⁶⁷

13 Central to the FCC’s analysis is the fundamental distinction between retail and
14 wholesale markets. Recognizing that “the relationship between retail competition
15 and unbundling is complex,” the FCC found that “[i]n many instances, retail
16 competition depends on the use of UNEs and would decrease or disappear without
17 those UNEs; thus, a standard that takes away UNEs when a retail competition

21 ⁶⁴ See Letter from Karen Brinkmann, Latham & Watkins, LLP, to Marlene H. Dortch,
22 Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 6, 2003); Letter from
23 Karen Brinkmann, Latham & Watkins, LLP, to Marlene H. Dortch, Secretary, FCC, CC
24 Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 7, 2003); Ex Parte Notice, Karen Brinkmann,
25 Latham & Watkins, LLP, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338,
26 96-98, 98-147 (filed Jan. 16, 2003).

⁶⁵ *Triennial Review Order* at ¶ 114.

⁶⁶ *Id.* at ¶ 115 (citing ACS *Ex Parte* Letters, dated Jan. 6, 2003 and Jan. 16, 2003).

⁶⁷ *Id.*

1 threshold has been met could be circular.”⁶⁸ Thus, when ACS witness Shelanski cites
2 GCI market share data as “[t]he most basic proof of GCI’s lack of impairment,”⁶⁹ he
3 is conceding that the central proof upon which ACS relies for its claim of “no
4 impairment” is that which has already been rejected by the FCC. This discredited
5 ACS theory can hardly be cited as persuasive evidence of non-impairment for any
6 UNE.
7

8
9 **3. The FCC Rejected Denying Access to Unbundled Switching
Based on the Presence of Cable Facilities**

10 ACS also claims that “GCI has a new technology alternative to unbundled
11 switching that it has taken concrete steps to implement.”⁷⁰ Thus, ACS would have
12 the Commission rely on GCI cable network as the basis for a “no impairment”
13 finding for unbundled switching. The FCC has squarely rejected the notion that
14 cable telephony provides an acceptable substitute for local switching.⁷¹ The FCC
15 concluded that the technology does not “provide[s] probative evidence of an entrant’s
16 ability to access the incumbent LEC’s wireline voice-grade local loop,” classifying
17 the technology as “evidence of entry using *both* a self-provisioned loop *and* a self-
18 provisioned switch.”⁷²
19

20
21 Moreover, under the potential deployment analysis, the FCC requires that the
22

23 ⁶⁸ *Id.*; Kelley Reply Testimony at ¶¶ 37-38.

24 ⁶⁹ Shelanski Affidavit at ¶ 24.

25 ⁷⁰ ACS Comments at 16; *see also* Shelanski Affidavit at ¶ 6 (stating that the GCI cable
26 network “gives it a distinct alternative to either UNE-L or UNE-P (or resale) for providing
27 local telephone service”).

⁷¹ *Triennial Review Order* at ¶ 446.

⁷² *Id.* (emphasis in original).

1 state commission consider whether “*actually* deployed switches in the market at issue
2 permit competitive entry in the absence of unbundled local switching.”⁷³ For this
3 reason, the Commission has already rejected ACS’ efforts to deny consumers access
4 to facilities-based competitive alternatives based on speculation about new
5 deployments over the next months, or even two years. According to the
6 Commission, “It would be speculative to conclude that no impairment exists today
7 based on an expectation of what a carrier might deploy two years in the future.”⁷⁴
8 But that’s exactly the basis upon which ACS seeks to have the Commission make a
9 “no impairment” finding in the case of unbundled switching.⁷⁵

12 **C. ACS’ Proliferation of Non-Multi-Hostable Concentrator Devices**
13 **Constitutes an Exceptional Source of Impairment**

14 GCI presented comprehensive comments and evidence demonstrating that it is
15 impaired without access to unbundled switching where ACS has deployed non-multi-
16 hostable remotes or concentrators.⁷⁶ It is undisputed that GCI has deployed local
17 switches and collocations to serve Anchorage, Fairbanks, and Juneau and has every
18 incentive and interest to maximize the utilization of this sunk investment. Only the
19 ACS network architecture—not the lack of GCI facilities—impedes GCI’s access to
20

21 ⁷³ 47 C.F.R. § 51.319(d)(2)(iii)(B)(1).

22 ⁷⁴ *Order Requesting Data* at 6.

23 ⁷⁵ See Reply Testimony of Gina Borland, R-03-7 (Apr. 2, 2004) (“Borland Reply
24 Testimony”) at 6 (“GCI’s current plans call for conversion of 8,000 to 12, 000 lines in 2004
in parts of Anchorage and an expansion plan to other parts of Anchorage, Fairbanks, and
Juneau over subsequent years.”).

25 ⁷⁶ See GCI Comments at 16-23; Thatcher Testimony at 2-14 & Exhibits ET-1, ET-2, ET-3,
26 ET-4, ET-5, ET-6, ET-7, ET-8, ET-10, ET-11, ET-12; Thatcher Reply Testimony at 2-13 &
Exhibits ET-13, ET-14, and ET-15.

the local loop at host switch locations with the installation of concentrators and remotes throughout ACS' network. GCI's inability to access these loops, even with its extensive switch deployments, is a quintessential form of impairment—ACS' network configuration prohibits GCI from further facilities-based competitive entry to areas served by these devices. The ACS data confirms that the impairment identified by GCI is pervasive and continuing in Fairbanks, Juneau, and Anchorage.⁷⁷

Fairbanks

Exhibit ET-13 is a revised network schematic, updated with ACS' data. This diagram confirms GCI's claim of impairment⁷⁸—a pervasive lack of loop access caused by the deployment of non-multi-hostable remotes and concentrators throughout the Fairbanks service area, denying GCI access to approximately 29 percent of the loops.⁷⁹

Juneau

Exhibit ET-14 is a revised network schematic, updated with ACS' data. This

⁷⁷ ACS has requested confidential treatment for this data. Though GCI entered a Non-Disclosure Agreement to gain access to the data in time to prepare its reply comments and testimony, GCI strongly disagrees with ACS' claim of confidentiality. *See generally* GCI Opposition to ACS Petition for Confidential Status, R-03-7 (filed Mar. 24, 2004). This point is underscored by the fact that GCI publicly filed network schematics with the Thatcher Testimony, based on information ACS had provided to GCI in the past, without any objection from ACS, but because of ACS' confidentiality claim, GCI is required to file revised versions of this very same type of schematic under seal. GCI reserves the right to supplement these reply comments at such time that the Commission resolves pending matters.

⁷⁸ *See also* Thatcher Reply Testimony at 6-9.

⁷⁹ This loop count is an estimate because at the time of filing, ACS continues withholds line count data, even pursuant to a Non Disclosure Agreement.

1 diagram confirms GCI's claim of impairment⁸⁰—a pervasive lack of loop access
2
3 caused by the deployment of non-multi-hostable remotes and concentrators
4 throughout the Juneau service area, denying GCI access to more than 50 percent of
5 the loops.⁸¹

6 **Anchorage**

7 Exhibit ET-15 is a revised network schematic, updated with ACS' data. This
8 diagram confirms GCI's claim of impairment⁸²—a pervasive lack of loop access
9 caused by the deployment of non-multi-hostable remotes and concentrators
10 throughout the Anchorage service area, denying GCI access to approximately nine
11 percent of the loops.⁸³

12 * * * *

13
14 Despite extensive investment in switching and collocation throughout the
15 Anchorage, Fairbanks, and Juneau study areas, GCI is unable to use its own
16 switching facilities to provision UNE-L when the individual customer copper loop
17 terminates in certain types of concentrators or in remote switches rather than at the
18 host switch or other remote site where GCI is collocated. When GCI has self-
19 provisioned switching, collocated at the central office switch,⁸⁴ and still cannot
20
21

22 ⁸⁰ See also Thatcher Reply Testimony at 8-10.

23 ⁸¹ This loop count is an estimate because at the time of filing, ACS continues withholds line
count data, even pursuant to a Non Disclosure Agreement.

24 ⁸² See also Thatcher Reply Testimony at 10-12.

25 ⁸³ This loop count is an estimate because at the time of filing, ACS continues withholds line
count data, even pursuant to a Non Disclosure Agreement.

26 ⁸⁴ The term "host switch" may be used interchangeably with "central office."

1 access the customer loop, it is impaired.

2
3 **D. Switching Impairment Cannot Be Resolved Through Rolling**
4 **Availability of Unbundled Switching**

5 It is not possible to resolve these impairments through “rolling availability” to
6 unbundled switching. Though the FCC anticipated that shorter term availability of
7 unbundled mass market switching could address sources of impairment like customer
8 transition problems and high churn,⁸⁵ it will not address the impairment caused by
9 ACS’ network design. As GCI has demonstrated, the numerous tasks necessary to
10 establish collocation—if possible at all—may differ in time and scope on a case-by-
11 case basis, depending on the method of collocation to be used.⁸⁶ Therefore,
12 unbundled switching must remain available unless and until ACS cures these
13 impairments.
14

15 **1. ACS Should Resolve Impairment Through Network**
16 **Adjustments**

17 It is not necessary for GCI to collocate at every ACS remote and concentrator
18 to access customer loops, a costly and difficult process, to overcome this barrier.
19 Instead, there are a number of network adjustments that ACS could take to mitigate
20 the impairment its deployment of remotes and concentrators imposes upon GCI.
21 First, when ACS installs a remote switch or DLC in an area where GCI currently has
22 access to unbundled loops, ACS could leave a sufficient number of copper pairs
23

24 ⁸⁵ 47 C.F.R. § 51.319(d)(2)(C).

25 ⁸⁶ Thatcher Testimony at 11-12; Reply Testimony of Blaine D. Brown, R-03-7 (filed Apr. 2,
26 2004) (“Brown Reply Testimony”) at 2-3; GCI Discovery Response at 3-5 & Exhibits GCI-
27 1 and GCI-2.

1 available to GCI to continue providing service on unbundled loops (effectively
2 bypassing the remote switch or DLC).⁸⁷ If multiplexing is available at the remote
3 switch or DLC, another technical solution would be the availability to GCI of
4 enhanced extended links (“EELs”)—a combination of UNE DS1s, multiplexing, and
5 UNE loops, which GCI could then connect to its own switching facilities.⁸⁸ In the
6 case of a DLC deployment, ACS could deploy DLCs with multi-hosting capability.⁸⁹
7 Each of these network design changes to permit loop access is available if ACS chose
8 to adopt them where it has an impeding concentrator device.
9

11 2. Imposing Sub-Loop Collocation Requirements on GCI 12 Would Be Unlawful

13 ACS and Dr. Shelanski acknowledge to some extent the barriers ACS has
14 raised to GCI’s access to customer loops with deployed facilities but would shift the
15 financial burden of resolving those barriers (or not) on GCI. According to Dr.
16 Shelanski, GCI should be required to collocate a remote terminal at some 50-60
17 remote and concentrator locations throughout the ACS service areas to “extend the
18 reach of its existing switches to new customer.”⁹⁰ Viewed correctly, however, this
19 ACS’ proposal is not for GCI to “extend the reach of...switches,” but to construct
20 loop plant to overcome the impairment that ACS has imposed. This approach is
21

23 ⁸⁷ Thatcher Reply Testimony at 13.

24 ⁸⁸ *Id.* at 14 This approach, however, may present a number of operational challenges due to
the relative complexity of the loop circuits, which make this solution more practical for a
limited number of enterprise customers rather than for mass market customers. *Id.*

25 ⁸⁹ *Id.*

26 ⁹⁰ Shelanski Affidavit at ¶ 21.

1 unlawful.⁹¹

2
3 The FCC expressly required that the ILEC must continue to provide access to
4 remote- or concentrator-served loops *at the central office*, even when such
5 technology had been deployed and there is no longer “a one-for-one transmission
6 path between an incumbent’s central office and the customer premises”.⁹² ILECs are
7 required to implement policies, practices, and procedures to provide CLECs access to
8 integrated DLC loops, including providing the CLEC access to the spare copper
9 facility or make universal DLC systems available.⁹³ The ILEC obligation to provide
10 access could not be more clear, in that the FCC directed “even if neither of these
11 options is available, incumbent LECs must provide requesting carriers a technically
12 feasible method of unbundled access.”⁹⁴

13
14 ACS has taken none of these required steps for its non-multi-hostable remotes
15 and concentrators, and now would have the Commission shift ACS’ burden to GCI.
16 At bottom, this approach is unlawful. The required outcome is that until such time
17 that ACS corrects the impairments imposed by its network design, it must continue to
18 make unbundled switching available.
19
20

21 ⁹¹ It is also unreasonable. *See* Thatcher Reply Testimony at 14-15 (“GCI should not be
22 required to assume uneconomic additional costs beyond the typical costs for collocation at
any site to overcome impairment at the host switch.”).

23 ⁹² *Id.* at ¶ 297; *see also* Thatcher Testimony at 5 (“a remote switch combines the loops it
24 serves into a concentrated umbilical link to the host switch, which precludes access to the
individual loops at the host switch”), 6 (“Concentrators in an integrated mode feed the
combined concentrated loops into the ILEC switch in a TR-008 or GR-303 format and do
not have the capability of splitting out an individual loop at the switch.”).

25 ⁹³ *Id.* at ¶ 297.

26 ⁹⁴ *Id.*

E. A Service Area-Specific DS0 Cutoff Must be Adopted

The FCC has determined that the “cross-over,” or “cutoff,” between mass market and enterprise customer loops is the point at which it is economically feasible to lease or build a T1 connection to a customer premise, aggregate multiple analog lines, and serve the customer using the CLEC’s own switch, in lieu of local circuit switching for individual DS0s.⁹⁵ The point at which the combined costs of the switch port, T1, customer premise equipment, central office equipment, and customer service are less than the revenues associated with the service over a certain number of lines is the “cross-over” point. Applying the cost and revenue comparison in each service areas, GCI demonstrated that the following service area-specific DS0 cutoff should apply: Anchorage – 11; Fairbanks – 8; and Juneau – 19.⁹⁶ Given the FCC’s non-impairment finding for DS1 capacity and above Local Circuit Switching, the DS0 cutoff level is a critical demarcation point for determining when a multi-line customer may or may not be served via unbundled switching.

1. The RCA Is Required to Perform a *De Novo* Analysis

ACS did not file any testimony on this matter in its Comments. In its

⁹⁵ Thatcher Testimony at 14-15; *see also Triennial Review Order* at ¶ 451 (finding that at some number of DS0s to an individual customer premise, “it becomes viable to aggregate loops at a customer location and provide service at a DS1 capacity interface or higher. Specifically, if a customer has purchased services from the competitive carrier that require a DS1 or above loop, it is economically feasible to digitize the traffic and aggregate the customer’s voice loops at the customer’s premises and put them onto a high-capacity circuit.”) (internal citations omitted).

⁹⁶ Thatcher Testimony at 17 and Exhibit ET-9. These cut-offs should apply on a per customer, per location basis, and the transition timeline provided for DS0 capacity end-users should apply, to the extent necessary. *See* 47 C.F.R. § 51.319(d)(2)(iv).

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objections to GCI's discovery requests, however, ACS implied that four lines would be a more appropriate cutoff point, apparently offended by the fact that GCI had proposed a cutoff greater than four. ACS questioned GCI's service area-specific results solely because the FCC had previously applied a four line cutoff to the top 50 Metropolitan Statistical Areas ("MSAs") (as designated by population) and because "Anchorage, Fairbanks, and Juneau are as competitive as most, if not all, of those markets."⁹⁷ This claim however, does not appear to be grounded in any analysis of the type required by the FCC. In fact, the original four-line cut-off for mass market switching was expressly limited to the top 50 MSAs, and the FCC only preserved that standard until the state commission had completed the DS0 cutoff review called for by Section 51.319(b)(2)(iii)B)(4).⁹⁸ Based on the 2000 census, Anchorage was ranked number 143,⁹⁹ and Fairbanks was ranked number 422.¹⁰⁰ Adoption of the arbitrary (and defunct) four-line cutoff in lieu of the GCI proposal, would be in direct contradiction with the granular scope of this proceeding.¹⁰¹

2. GCI's Proposal Is Based on the Best Evidence Available

In contrast to the ACS commentary, GCI witness Thatcher compared the cost of provisioning a T1 connection to a customer premise in lieu individual DS0s via

⁹⁷ ACS LEC's [sic] Objections to GCI's Requests for Discovery and Request for Additional Information, R-03-7 (filed Feb. 6, 2004) at 2-3.

⁹⁸ 47 C.F.R. § 51.319(d)(3)(ii).

⁹⁹ <http://www.census.gov/population/cen2000/phc-t29/tab03a.xls>.

¹⁰⁰ *Id.*

¹⁰¹ See Thatcher Testimony at 17-18.

unbundled switching with the revenues associated with the service.¹⁰² To perform this analysis, a number of assumptions were required. For example, Ms. Thatcher had to assume that each of the possible provisioning options would be available for the foreseeable future at the rates set forth in applicable interconnection agreements or tariffs and that facilities would be suitable for the intended purpose.¹⁰³ GCI sought confirmation of these assumptions to verify the analysis, and in the absence of such confirmation from ACS,¹⁰⁴ it may be necessary to revisit the designated cutoff should ACS refuse to provide the required services or charge a different rate (which could be higher or lower).

Ms. Thatcher considered the revenue side of the analysis as well. Such revenues include retail rates, access charges (both interstate and intrastate), and, in some cases, universal service support.¹⁰⁵ In the event of changed circumstances or the determination that one or more assumptions was incorrect, it could be necessary to reassess the cross-over point.¹⁰⁶ Based on the data in the record, the Commission should adopt the following service area-specific, DS0 cut-offs: Anchorage – 11; Fairbanks – 8; and Juneau – 19.

¹⁰² *Id.* at 15-16 (describing analysis).

¹⁰³ *Id.* at 16-17.

¹⁰⁴ *Id.*

¹⁰⁵ Exhibit ET-9

¹⁰⁶ *Id.* at 17 and Exhibit ET-9.

IV. THE COMMISSION SHOULD ADOPT A BATCH CUT PROCESS

As described in GCI Comments and the Borland and Keeling Testimonies, a batch cut process should be applied in each of the local service areas where ACS provides unbundled local circuit switching to address impairment in those areas where GCI can access loops via its own switching. When a competitive LEC seeks to serve a customer via UNE loop, the loop must be physically disconnected from the incumbent's switch and moved to the competitor's switch. This transition is called a hot-cut, because the loop typically is in use or "live" when the work to move the loop occurs.¹⁰⁷ Therefore, close coordination between the incumbent and competitor is required to ensure that the customer does not experience prolonged outages as the work is being performed. Among economic and operational barriers caused by the cut over process noted by the FCC is the "potential for disruption of service to the customer."¹⁰⁸

A. ACS' Practice Demonstrates that a Batch Cut Process is Appropriate in Anchorage, Fairbanks, and Juneau

ACS and GCI have twice developed batch cut processes, first for Anchorage, and then for Fairbanks and Juneau.¹⁰⁹ Thus, it is not surprising that ACS concedes that it already has a batch cut process.¹¹⁰ For example, ACS witness Pratt stated that

¹⁰⁷ See *Triennial Review Order* at n.1294.

¹⁰⁸ See Kelley Reply Testimony (citing *Triennial Review Order* at ¶ 459).

¹⁰⁹ See Reply Testimony of M. Sue Keeling, R-03-7 (filed Apr. 2, 2004) ("Keeling Reply Testimony") at 3.

¹¹⁰ *Id.* at 3; see also *Order Requesting Data* at 13 (noting that "ACS represents that its current batch processes are adequate").

1 “ACS currently uses what we believe the FCC means when it refers to a batch cut
2 process. The orders for all carriers, including ACS, GCI, AT&T, and others, are
3 processed in a single batch.”¹¹¹ ACS witness Shelanski agreed that “ACS now has a
4 procedure in place for hot cuts.”¹¹² And ACS echoed Dr. Shelanski’s statement that
5 “ACS now has a procedure in place for hot cuts that meets the actual demand for cut
6 overs that the company is receiving from CLECs.”¹¹³ Thus, even though ACS
7 questions whether a batch cut process should be applied in rural wire centers or for
8 relatively small volumes,¹¹⁴ it apparently agrees in practice that a batch process is
9 appropriate in its territories. Thus, there does not appear to be any dispute between
10 the parties as to the need for some type of process, only as to the steps that should be
11 required.

12
13
14 **B. The GCI-Proposed Process Will Minimize Service Disruptions**

15 ACS also questions the relevance of “anecdotal evidence” of customer harm
16 from a faulty batch cut process.¹¹⁵ However, the FCC previously cited the “potential
17 for disruption of service to the customer” among the economic and operational
18 barriers caused by deficient hot cut processes.¹¹⁶ The absence of, or inconsistent
19 adherence to, notification and coordination tasks as part of the batch cut process will
20

21
22 ¹¹¹ Pratt Affidavit at ¶ 9.

23 ¹¹² Shelanski Affidavit at ¶ 29.

24 ¹¹³ ACS Comments at 21-22 (citing Shelanski Affidavit at 17).

25 ¹¹⁴ See ACS Comments at 19 (quoting *Triennial Review Order* at ¶ 490).

26 ¹¹⁵ See Borland Reply Testimony at 2-3 (discussing Dr. Shelanski’s conclusion that
27 “complaints about occasional costs . . . do not demonstrate meaningful impairment (quoting
Shelanski Affidavit at 18-19).

¹¹⁶ *Triennial Review Order* at ¶ 459.

1 increase the opportunity for customer outages and disruptions in the hot cut process,
2 as well as the occurrence of unsuccessful hot-cut of loops between carrier switches.¹¹⁷
3

4 In contrast, the GCI process, which should not impose any costs on ACS,¹¹⁸ would
5 formalize the existing process and institutionalize the prior notification and
6 coordination tasks that often are not followed, to the potential detriment of
7 consumers and either carrier.¹¹⁹
8

9 The GCI batch cut process is detailed in Exhibit MSK-5. A maximum of 10
10 conversions (counted on a customer basis) should to be performed in a batch,¹²⁰ and
11 an exception to the maximum should apply for any single order having more than 10
12 lines, so that all the customer's lines are worked in one batch.¹²¹ In addition, the
13 Commission should prohibit the imposition, either express or implied, on the number
14 of orders that may be worked in a day.¹²² Such limits, regardless of the context in
15 which they are imposed, produce the conditions that lead to substantial order backlog
16 and delay.
17

18
19
20
21
22 ¹¹⁷ Keeling Reply Testimony at 4-10 (reviewing process ACS filed as Exhibit 3); *id.* at 10-12 (rebutting Mr. Pratt's suggestion that CLEC actions were the source of process disruptions).

23 ¹¹⁸ See GCI Discovery Response, Exhibit GCI-5.

24 ¹¹⁹ A batch cut process would be critical in the event of a "no impairment finding" for local switching. Borland Reply Testimony at 7.

25 ¹²⁰ Keeling Reply Testimony at 16.

26 ¹²¹ *Id.*; see Borland Testimony at 6-7.

27 ¹²² Borland Reply Testimony at 3-5; GCI Comments at 30; Borland Testimony at 6-7.

C. The Batch Cut Process Remains Necessary with Cable Telephony

Dr. Shelanski claims that a batch cut process is not necessary because GCI's cable network "affords it a strategic alternative for competitive service not even available to ACS itself."¹²³ Embedded in Dr. Shelanski's statement is the apparent assumption that GCI's cable facilities are immediately and instantaneously available for the provision of telephony in each of Anchorage, Fairbanks, and Juneau, and that such facilities offer the prospect of a ubiquitous alternative throughout each service area. Neither assumption is accurate.

First, GCI cable plant requires installations and upgrades for rendering the cable plant hospitable to a voice service of the quality required for basic telephone service.¹²⁴ This upgrade process will span a number of years.¹²⁵ Second, cable telephony will not be a provisioning alternative where there is no cable plant.¹²⁶ Thus, a batch cut process will remain necessary as GCI continues "to provision local service via UNE-loops in entire areas of Anchorage—and all of Fairbanks and Juneau—for quite some time."¹²⁷

¹²³ Shelanski Affidavit at ¶ 7.

¹²⁴ Borland Reply Testimony at 5-6.

¹²⁵ *Id.* at 6.

¹²⁶ *Id.* at 6-7.

¹²⁷ *Id.* at 6.

V. GCI IS IMPAIRED WITHOUT ACCESS TO DEDICATED TRANSPORT

GCI has deployed transport throughout each of its local service areas.

However, that fact alone is not sufficient to sustain a finding of non-impairment. The FCC “rightly required a showing that more than one or two competitors must have (or are potentially able to) overcome impairment before a general finding of non-impairment can be reached”, so “GCI’s presence cannot be used as evidence of general non-impairment.”¹²⁸ Moreover, dedicated transport, as part of an enhanced extended link (“EEL”) provides a potential approach for GCI to gain access to customer loops to which it is currently denied access due to ACS’ network design. Thus, dedicated transport should be retained as a UNE at all permissible levels.

A. ACS Waived Its Challenge of Dedicated Transport

As an initial matter, ACS has already waived its challenge to dedicated transport. As the incumbent, ACS should be well aware of the identity of those entities that are collocated in any ACS wire center or switch, and thus, may be providing transport between those locations. However, ACS previously raised no dispute regarding the FCC’s findings on dedicated transport, even though the RCA clearly stated, “If no entity contends an issue, the Commission may assume that issue is resolved and that no further action may be needed.”¹²⁹ In failing to contend

¹²⁸ Kelley Reply Testimony at ¶ 46.

¹²⁹ *TRO Notice of Special Meeting* (issued Sept. 1, 2003) at 2.

1 transport then—or in its subsequent written comments,¹³⁰ ACS plainly has waived its
2 opportunity to raise dedicated transport as an issue.
3

4 Moreover, ACS bore the burden of identifying in its Comments those routes
5 over which it could make a *prima facie* case for review of the impairment finding
6 with respect to transport.¹³¹ ACS made no attempt to do so, providing only general
7 descriptions about “ample fiber resources”¹³², and only vaguely describing GCI fiber
8 locations. Thus, ACS waived—at least three times—its challenge to dedicated
9 switching.¹³³
10

11 **B. None of the Triggers Can be Met on Any Route**

12 On the substance of the matter, there simply is no ground upon which ACS
13 can meet the self-deployment, competitive wholesale, or potential deployment trigger
14 on any route. While GCI does have fiber facilities between ACS central office
15 locations and makes high-capacity fiber available under tariff,¹³⁴ the record reflects
16
17

18
19 ¹³⁰ ACS Comment to Response of GCI to Notice of Special Public Meeting (Oct. 20, 2003).

20 ¹³¹ See, e.g., *TRO Procedural Order* at 9 (“Those wishing to dispute the FCC finding of
21 impairment [for DS1, DS3, and dark fiber loops] must make a *prima facie* case, including
22 details of proof in support of their position”).

23 ¹³² Shelanski Affidavit at 20.

24 ¹³³ GCI notes that in raising objections in the alternative to its argument that ACS waived its
25 dedicated transport challenge was in no way intended to be a concession as to the validity of
26 ACS discovery questions. GCI merely preserved its objections to the ACS discovery
27 requests, in the event that the Commission did not rule on GCI’s waiver argument in the
discovery phase. See Public Meeting Transcript, R-03-7 (Feb. 18, 2004) at 47. To the
extent the Commission declined to determine the waiver issue in the discovery phase, GCI
urges it to so rule now.

¹³⁴ Response of GCI to RCA Order Requesting Data, R-03-7 (Mar. 19, 2004) at 7 (Response
to Question No. 22).

1 that GCI is the only carrier unaffiliated with the incumbent to do so.¹³⁵ Thus, the
2 self-deployment and competitive wholesale triggers cannot be met on any route.
3

4 ACS did not even identify a “potential deployment” challenge in connection
5 with dedicated transport,¹³⁶ demonstrating that this trigger cannot be met either. As
6 an initial matter, ACS is the identity best-suited to offer facts in support of such a
7 claim. It has not. Second, ACS’ general claims of fiber deployment do not
8 demonstrate the potential for “competitive, multiple supply” of transport along any
9 given route. Indeed, most of the facilities it mentioned are not transport facilities as
10 defined for the purpose of unbundled network elements because they are not between
11 two ACS switching centers, terminating in a collocation arrangement in the central
12 office.¹³⁷ ACS fails to identify any other provider that offers transport facilities
13 between ACS wire centers or switches.¹³⁸
14

15 Third, discovery to other carriers identified no additional providers.¹³⁹
16 Though GCI identified route specific capacity between ACS switching locations,¹⁴⁰
17

18
19 ¹³⁵ Alaska Fiber Star only provides fiber services between individual ACS central offices
20 and the AT&T/Alascom facility at Lena Point in Juneau. Letter from Alaska Fiber Star and
21 WCI Cable to RCA (dated Mar. 15, 2004). The only other filer was DSL.net, which
22 reported that it was not providing service in Alaska. Letter from DSL.net, Inc. to RCA
(dated Mar. 18, 2004).

23 ¹³⁶ See ACS Comments at 24-25. For the reasons already stated, ACS should not be
24 permitted to make this argument now.

25 ¹³⁷ Brown Reply Testimony at 6 (citing *Triennial Review Order* at ¶ 406).

26 ¹³⁸ The Shelanski and Pratt Affidavits refer to AFS fiber, but neither identifies a single ACS
27 route where both GCI and AFS are thought to provide transport.

¹³⁹ See n.83 *supra*; see also Thatcher Reply Testimony at 19.

¹⁴⁰ See Supplement to Response of GCI to RCA Order Requesting Data, R-03-7 (filed Mar.
26, 2004), Revised Exhibit GCI-7 and Exhibit GCI-9. See also Brown Reply Testimony at
5-6 (explaining how capacity along a ring must be counted).

this in and of itself is insufficient to as evidence of general non-impairment.¹⁴¹ It is simply not the case, as Dr. Shelanski claimed,¹⁴² that the Commission can render a no impairment finding under these circumstances. As a result, ACS cannot satisfy any trigger on any route.¹⁴³

C. Dedicated Transport Remains Necessary and Presents a Possible Solution for GCI to Gain Access to ACS-Blocked Loops

The facts support continued availability of dedicated UNE transport. GCI has leased DS3 and DS1 UNE transport between its switch and the ACS switches in all three markets, prior to completing its collocation build-outs. Although GCI has generally self-provisioned interoffice transport,¹⁴⁴ GCI does not have access to alternative transport facilities—either provided by itself or another carrier—between other ACS wire center or other remote and/or concentrator locations. Thus, continued access to unbundled dedicated transport should at least be maintained between those ACS locations where GCI is not collocated, such as Girdwood, Indian, and Lemon Creek.¹⁴⁵

The continued availability of UNE transport may provide a solution for

¹⁴¹ See Kelley Reply Testimony at ¶¶ 42, 47.

¹⁴² See Shelanski Affidavit at ¶ 34

¹⁴³ GCI also notes that ACS has provided basically no information in support of its claim and stated in comments that it required more information to “analyze the transport market in Anchorage, Fairbanks, and Juneau.” ACS Comments at 26. With no competitor other than GCI capable of providing transport, apparently it is too late for ACS to produce any new theories in support of its “no impairment” bid.

¹⁴⁴ See GCI Data Response, Exhibit GCI-6; GCI Supplemental Data Response, Exhibits Revised GCI-7 and GCI-9.

¹⁴⁵ Thatcher Reply Testimony at 19.

1 accessing customers served by those non-multi-hostable remotes, through the use of
2 EELs. Denial of continued access to dedicated transport under these circumstances
3 would simply further contribute to GCI's impairment with respect to use of its
4 switching facilities.
5

6 **VI. GCI IS IMPAIRED WITHOUT ACCESS TO HIGH-CAPACITY**
7 **LOOPS**

8 ACS is only challenging impairment on DS3 and dark fiber loops (not DS1
9 loops).¹⁴⁶ The trigger for DS3 loops is met if two or more providers, unaffiliated
10 with each other or the incumbent, self-provision loops or offer competitive wholesale
11 facilities. The trigger for dark fiber loops is met if two or more providers,
12 unaffiliated with each other or the incumbent, self-provision loops. GCI is the only
13 discovery respondent to report any high-capacity loop services.¹⁴⁷ Without more,
14 ACS cannot show that these triggers are met or any potential that these triggers will
15 be met.¹⁴⁸
16

17 As previously demonstrated, it is not sufficient to issue a "no impairment"
18 finding under the potential deployment analysis simply by pointing to GCI,¹⁴⁹ as
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20
21

22 ¹⁴⁶ ACS Comments at 28.

23 ¹⁴⁷ GCI Data Response, Exhibit GCI-8; *see also* Thatcher Reply Testimony at 21.

24 ¹⁴⁸ GCI also notes that ACS witness Shelanski stated in support of the ACS Comments that
25 the available data did not "permit me to reach any concrete conclusions about impairment
26 due to high-capacity loops." Shelanski Affidavit at ¶ 35. With no competitor other than
27 GCI capable of providing loops, it is too late for ACS to produce any new theories in
support of its "no impairment" bid.

¹⁴⁹ *See* Kelley Reply Testimony at ¶¶ 42, 47.

1 suggested by ACS' witness.¹⁵⁰ ACS simply cannot demonstrate the potential for
2 "multiple, competitive supply" of high-capacity UNE loops.
3

4 Nor can it resolve this evidence deficiency by claiming that it does not have
5 access to certain loops GCI has deployed.¹⁵¹ This is simply inaccurate.¹⁵² GCI has
6 deployed its copper loop facilities with GR-303 capability, which permits the very
7 multi-hosting that the vast majority of ACS concentrator devices denies.¹⁵³ For these
8 reasons, the Commission should retain the national finding of impairment for DS3
9 and dark fiber loops.
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22 ¹⁵⁰ See Shelanski Affidavit at ¶ 35.

23 ¹⁵¹ See *id.* at ¶ 35; Pratt Affidavit at ¶ 17.

24 ¹⁵² The assertion that GCI "provides 25% of its service using its own switching, transport
25 and loops" is also inaccurate. See Shelanski Affidavit at 25. Even including ISP lines, GCI
26 only provisions approximately seven percent of its customer lines entirely over its own
27 facilities.

¹⁵³ Brown Reply Testimony at 6-7.

Dated April 2, 2004 at Anchorage, Alaska.

Respectfully submitted,

By: Tina Pidgeon by MMW
Tina Pidgeon
Vice President, Federal Regulatory Affairs

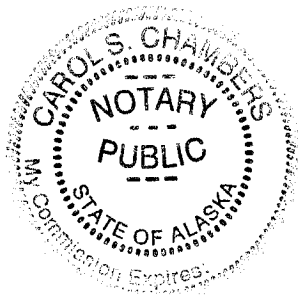
By: Martin M. Weinstein
Martin M. Weinstein
Regulatory Counsel

VERIFICATION

I, Martin Weinstein, verify that I believe the statements contained in this pleading are true and accurate.

Martin M. Weinstein
Martin M. Weinstein

SUBSCRIBED AND SWORN to before me this 2 day of April 2004.



Carol Chambers
Notary Public in and for Alaska
My commission expires: 4-2-05

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